IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.01.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

S.A.No.201 of 1997

Jawarilal Jain .. Appellant/Plaintiff

vs.

R.Vijyakumar .. Respondent/Defendant

Prayer: This second appeal has been filed against the decree and judgment, dated 18.4.1996, passed by the Principal District Judge, North Arcot, Vellore in A.S.No.35 of 1994, partly allowing the appeal and setting aside the judgment and decree of the trial Court in O.S.No.229/1991 on the file of the Subordinate Judge, Ranipet, dated 30.11.1993.

For Appellant : Mr.K.V.Ramesh

For Respondent : Mr.V.Natarajan

JUDGMENT

This second appeal has been preferred against the decree and judgment in A.S.No.35/1994 on the file of the Court of Principal District Judge, Vellore. The plaintiff filed the suit O.S.No.229/1991 before the Subordinate Judge, Ranipet. The plaintiff, who won the case before the trial Court, has lost his case in part before the first appellate Court, which necessitated the plaintiff to prefer this second appeal.

2. The averments in the plaint in brief relevant for the purpose of this second appeal are as follows:-

The defendant borrowed a sum of Rs.15,000/- from the plaintiff on 25.06.1984 and executed a promissory note in favour of the plaintiff agreeing to repay the same with interest thereon at 15% per annum. In spite of the repeated demand the defendant did not pay the amount. The pronote executed by the defendant was lost by the plaintiff on 09.06.1987 when he came in a bus from Wallajah to Vellore. A complaint was preferred by the plaintiff in this regard with the Vellore police. The pronote was not traced out. The defendant has not paid any amount. A sum of Rs.20,350/- is due to the plaintiff on the date of filing of the suit. Hence, the suit.

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3. The defendant in his written statement would contend that he had borrowed only a sum of Rs.5,000/- and executed a pronote in favour f the plaintiff. After the receipt of notice from the plaintiff, the defendant had paid a sum of Rs.4,000/- towards the principal debt and interest. An endorsement to the above said partial discharge has also been made by the plaintiff on the reverse side of the pronote on 5.4.1985. Hence the defendant did not issue any reply notice to the plaintiff. It is fradulent on the part of the plaintiff to state that the suit pronote has been lost on 9.6.1987. The plaintiff has burked the pronote, only with an ulterior motive to claim excess amount. Hence a decree may be passed for a sum of Rs.5,000/- together with interest at 12% per annum from the date of pronote till the date of plaint less Rs.4,000/- paid by the defendant on 5.4.1985.

4. The learned trial Judge has framed three issues. The plaintiff has examined himself as P.W.1 and exhibited Exs.P.1 to P.6. On the side of the defendant, the defendant has examined himself as D.W.1 and another witness as D.W.2. After going through the oral and documentary evidence produced before the trial Court, the learned trial Judge has decreed the suit as prayed for with costs. Aggrieved by the findings of the learned trial Judge, the defendant has preferred the first appeal. The learned first appellate Judge allowed the appeal in part thereby decreeing the suit for a sum of Rs.5,000/- with 12% interest from the date of pronote till the date of the plaint less Rs.4,000/- already paid by the defendant on 5.9.1984. Hence this second appeal before this Court by the plaintiff.

5. The substantial questions of law involved in this second appeal are as follows:-

a) Whether the finding of the first appellate Court relating to consideration to tune of Rs.5,000/- as against the claim of R.15,000/- dated 25.6.1984 is valid as against Section 118 of the Evidence Act?

b) Whether the findings of the first appellate Court with regard to the consideration to the tune of Rs.5,000/- in the absence of specific issue relating to applicability of Section 118 of Evidence Act is sustainable?

c) Whether the partial discharge to the tune of Rs.4,000/- dated 5.4.1985 is acceptable in the absence of any documentary evidence adduced by the respondents?

6. The points:-

6(a) The only substantial question before this Court is that under Section 118 of the Evidecne Act when the court has to presume that entire consideration is Rs.15,000/- under the alleged pronote dated 25.6.1984. Admittedly the pronote is not filed before the Court. According to the plaintiff, as P.W.1, while he was traveling from Wallaja to Vellore on 9.6.1987. P.W.1 in his evidence would depose that he has preferred a written complaint with the police

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and Ex.A.3 is a type-written copy. But there is no acknowledgment produced to show that Ex.A.3 was preferred on the alleged date with the police. Not even a FIR copy was produced to substantiate the contention of the plaintiff that he had lost the pronote dated 25.6.1984 while he was traveling in a bus from Wallaja to Vellore. Not even the registration number of the bus in which the plaintiff said to have traveled on 9.6.1987 from Wallaja to Vellore was furnished in Ex.A.3-complaint. Further it is pertinent to note that why the plaintiff has carried the pronote dated 25.6.1984 along with him in the year 1987 while traveling in the bus from Wallaja to Vellore. So as rightly observed by the first appellate Court the contention of the plaintiff that he has lost the pronote dated 25.06.1984 while traveling in a bus from wallaja to vellore cannot be believed.

6(b) The learned counsel for the appellant relying on 1999 (2) Supreme 187 (Bharat Barrel and Drum Manufacturing Company Vs. Amin Chand Payrelal) and 1999(3) SCC 35 (Bharat Barrel & Drum Manufacturing Company), contended that under Section 118(a) of the Negotiable Instruments Act when the defendant admits the execution of the pronote, the presumption will be the entire consideration of Rs.15,000/- was passed under the said pronote. The presumption under Section 118(a) of the Negotiable Instruments Act is only a rebutable presumption. In the absence of the non-production of pronote dated 25.6.1984, it cannot be presumed that Rs.15,000/- was passed on to the defendant towards consideration. But the defendant would admit in his evidence as D.W.1 that he had received onlyRs.5,000/- under the said pronote and after the receipt of the notice he has repaid Rs.4,000/-. To strengthen his defence the defendant has also examined a witness as D.W.2 to the alleged pronote dated 25.06.1984. D.W.2 also supported the case of the defendant to the effect that only Rs.5,000/- was passed towards consideration from the plaintiff to the defendant. He would further state that after the receipt of the suit notice the defendant approached the plaintiff along with him(D.W.2) and paid Rs.4,000/- on 5.4.1985 and an endorsement to that effect was made on the back side of the said pronote dated 25.6.1984. Under the above circumstances, the learned first appellate Court on the basis of the admission by the defendant in his written statement as well as in his evidence corroborated by the evidence of D.W.2, has correctly decreed the suit for Rs.5,000/- with 12% interest less Rs.4,000/-. I do not find any illegality or infirmity in the judgment of the learned first appellate Court to warrant any interference from this court. Point is answered accordingly.

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7. In the result, the second appeal is dismissed with costs, confirming the decree and judgment in A.S.No.35/1994 on the file of the Court of Principal District Judge, Vellore.

ssv

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To,

1.The Principal District Judge,
Vellore. [with records if any]

2.The Subordinate Judge, Ranipet.

3. The Section Officer, VR Section,
High Court, Madras.

1 CC TO MR.K.V. RAMESH, MADRAS ADVOCATE SR NO 4723

S.A.No.201 of 1997

JE(CO)

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